Neutral Citation Number: [2013] EWHC 194 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/3898/2012

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 23 January 2013

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)

MR JUSTICE KEITH

and

MR JUSTICE GLOBE

B E T W E E N:

HER MAJESTY'S ATTORNEY GENERAL

Claimant

- v -

NORMAN SCARTH

Defendant

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190 Fleet Street, London EC4
Telephone No: 020 7421 4040
(Official Shorthand Writers to the Court)

Mr D Penny (instructed by the Treasury Solicitor)
appeared on behalf of the Claimant

Mr A Waldman (instructed by Bindmans LLP, London WC1X 8HB)
appeared on behalf of the Defendant

J U D G M E N T
(As Approved by the Court)

Wednesday 23 January 2013

THE LORD CHIEF JUSTICE:
1. This is the judgment of the court.

2. This is an application by Her Majesty's Solicitor General for the committal of Norman Scarth for contempt of court. Two distinct, but connected, contempts are alleged. The first is that on 2 February 2012 at Leeds Magistrates' Court the defendant used a tape-recording or other instrument, probably a video and audio-recording device, for recording the proceedings in that court without the court's leave, contrary to section 9(1)(a) of the Contempt of Court Act 1981 ("the 1981 Act"). The second is that thereafter, and contrary to section 9(1)(b) of the Act, the defendant published a recording of the legal proceedings he had made on a "You Tube" website under the heading "Shyster Roy Anderson Masquerading as a Magistrate".

3. The defendant himself has not attended. He is in the Republic of Ireland. He has sent a number of different documents to the court which we have considered and to which we shall refer later in the judgment. He was represented today before the court by Mr Waldman and solicitors. They were bound by the instructions that he gave them and were therefore able to play only a very limited part indeed in the proceedings.

4. The history of events which have culminated in the present application is that on 2 February 2012 the defendant was a defendant in criminal proceedings which alleged that he had committed two offences. The first of these offences took place on 29 September 2011 at 151 Shadwell Lane, Leeds, when the defendant caused harassment, alarm or distress to Jonathan Rose by using threatening, abusive or insulting words or behaviour. The second occurred shortly afterwards on 22 October 2011 at Harrogate Road, Leeds, when he used threatening, abusive or insulting words or behaviour or disorderly behaviour within the hearing or sight of an individual, likely to cause harassment, alarm or distress. Both offences were said to be religiously aggravated. Both were said to contravene sections 28 and 31(1) of the Crime and Disorder Act 1998. The two offences have now been dealt with.

5. Norman Scarth was born in October 1925. He is 87 years old. From the evidence before us it is clear that his mobility is somewhat limited and that his hearing is now no longer as good as it was. He served in the Royal Navy during World War II and played his part in the ghastly arctic convoys where so many good men gave up their lives.

6. During the mid-1990s he was the subject of County Court proceedings which arose from a relatively small debt. The dispute was dealt with by arbitration and the hearing held in private. The defendant was unsuccessful. He appealed to the European Court of Human Rights on the basis that there had been a violation of Article 6 of the Convention. In May 1998 the application was declared partly admissible, and thereafter the Commission reported that there had been a violation of Article 6 of the Convention. The defendant was awarded £705 and some pence by way of costs. No damages were awarded. The finding of violation was regarded as a sufficient remedy.

7. In 2001, following a trial, the defendant was convicted of wounding with intent to do grievous bodily harm, contrary to section 18 of the Offences against the Person Act 1861, following an attack by him on a bailiff when he (the defendant) was armed with and used a chainsaw. He was sentenced to an extended sentence of ten years, with a custodial term of six years' imprisonment. However, on appeal the sentence was quashed and the court ordered an interim hospital order, contrary to section 38 of the Mental Health Act 1983. The court

expressed itself concerned about the appellant's mental state which "undoubtedly required further investigation". For the details of that decision, see: R v Scarth [2002] EWCA Crim 2905. Our enquiry this morning as to what the final order of the court was has not been resolved. No doubt we will be informed in due course; but for present purposes we need not postpone the giving of this judgment.

8. A decade later, on 28 June 2011 the defendant recorded proceedings in a court in the Royal Courts of Justice. He subsequently posted that recording on the "You Tube" website.

9. Shortly afterwards, by when the defendant had appeared before the Crown Court at Bradford in proceedings to which again we shall have to come, a warning was written to him on behalf of the Attorney General that the recording of court proceedings was both a contempt of court and an offence under section 41 of the Criminal Justice Act 1925. However, in view of the defendant's recent commitment for contempt by the Crown Court at Bradford, proceedings were not required. The warning given to the defendant was, however, unequivocal:

> "Should you repeat this behaviour and continue to film court proceedings, you will be committing a contempt of court and criminal offence".

The letter continued that this might result in proceedings being taken against him.

10. On 25 July 2011 the defendant attended the Crown Court at Bradford together with a female friend who was due to stand trial. He announced to the trial judge that he was present as a McKenzie Friend on behalf of the defendant. She was, in fact, already represented by a solicitor advocate. Subsequent events are set out in the judgment of Pitchford LJ in the Court of Appeal Criminal Division: [2011] EWCA Crim 2228. The defendant recorded the proceedings using an audio camera concealed within a ballpoint pen. When it appeared that he was using a recording device he was told by an usher that the judge wanted to know whether the pen he was holding was making a recording. At this stage he asserted that the pen simply formed part of his hearing aid. But when the judge asked to see the pen, the defendant launched into a stream of abuse. He told the judge that he had the utmost contempt for him. The judge was Judge Jonathan Rose, who was identified as a victim in the proceedings in Leeds Magistrates' Court in February 2012. The defendant then addressed the usher. He shouted loudly at her:

> "And this slimy individual here, this dirty, slimy, stinking, bloody whore, I can speak the truth, I can speak to this bloody whore and denounce her for what she is."

This type of abuse continued for some time and he was eventually arrested and taken into custody. Judge Rose indicated that he would deal with the contempt on the following day, and made arrangements for the defendant to be represented.

11. On the following morning, having expressed his gratitude to counsel who had taken on this responsibility, the defendant told the judge:

> "I'm not going to take part in any trial in a kangaroo court, in a Star Chamber. I will not dignify it with my attendance. If you wish to continue with this grotesque kangaroo court trial, you will do so without me. I will go back down the cells and stay there if you send me to die in prison, and be proud to do so."

Accordingly, the hearing proceeded in his absence. The judge found contempt in relation to the deliberate recording, both audio and visual, of the proceedings of the court, which was prohibited, and that the defendant had lied when challenged about the purpose of the device, because he knew perfectly well that he was not permitted to record the proceedings. The second finding of contempt was, of course, directed to the use of deeply distressing and insulting language to a female member of the court staff. The sentence imposed was three months' imprisonment in relation to each of the two contempts, to be served consecutively, less one day.

12. In due course the hearing before the Court of Appeal Criminal Division demonstrated, perhaps unsurprisingly in view of the material we have already outlined, that the defendant himself was being cared for in the community under the care of a community forensic psychiatric nurse. He was diagnosed as suffering from delusional disorder. It was pointed out that he could be impatient and present as hostile to individuals, particularly those who he regards as part of the system. Those responsible for his care were concerned about his deteriorating mental health and issues arising in the context of his sheltered accommodation. The situation was further complicated because, unfortunately, the defendant had always refused medication. But in view of his disorder, his age and his general health, it was felt wiser not to compel him to take the medication. The court was concerned that the nature of the defendant's personality disorder meant that he was never likely to be one of those individuals who would see that he was in contempt, that this was unlawful, and that he would therefore seek to purge his contempt. Had he been, that almost certainly would have been the end of the matter at that stage. However, in the light of the medical evidence which had not been available to Judge Rose when he passed sentence, the court concluded that the public interest would no longer be served by the defendant's continuing incarceration. The sentence was reduced to twelve weeks' imprisonment in relation to each finding of contempt, less one day, but the sentences were ordered to be served concurrently. That meant that the defendant could be released.

13. Unfortunately, within a very short time the defendant was again looking for trouble. On 29 September 2011 he attended a synagogue in Leeds where Judge Rose was present with his family and other members of the Jewish community to celebrate the Jewish New Year. It is difficult to avoid the conclusion that this date and this occasion were chosen deliberately because of their significance to members of the Jewish community. He confronted two individuals outside the synagogue and Judge Rose himself. His outbursts were very troublesome. A vide-recording was uploaded on to "You Tube". The events of this day gave rise to the first charge against the defendant at Leeds Magistrates' Court on 2 February 2012.

14. About one month later, on 22 October 2011 the defendant attended the Marjorie and Arnold Ziff Centre in Leeds. He put a leaflet under the door, directly attacking Judge Rose who was present, saying that the judge was a Jew and making remarks like:

> "But for men like Norman Scarth, he, his parents or his grandparents would have died in the gas chambers."

Shortly afterwards he attempted to pass leaflets and was alleged to have used appalling language to the effect that, for example: "The Gestapo should have finished you off"; that sixty years ago he had fought in a war to save the likes of them and it was not for the likes of him in the war, all Jews would have died in the gas chamber. He took photographs of those leaving the synagogue, which many of those present found offensive and distressing. These events gave rise to the second charge which was due to be heard on 2 February 2012.

15. The hearing on 2 February was adjourned. On 29 May 2012 the hearing was completed in the absence of the defendant. He was fined £150, ordered to pay £500 in costs, and he was made subject to a restraining order intended to provide an element of protection from him for Judge Rose.

16. The present proceedings are not concerned with the charges against the defendant arising from his conduct on 29 September and 22 October 2011. Our attention is confined to the allegations of contempt based on the misuse of a tape-recorder or other equipment to record the proceedings in court on 2 February without leave of the court, and then the subsequent publication of those legal proceedings on the "You Tube" website.

17. Section 9(1) of the Contempt of Court Act governs the use of tape-recorders or any other instruments for recording sound in court. It is a contempt of court:

> "(a) to use in court, or bring into court for use, any tape-recorder or other instrument for recording sound, except with the leave of the court;
>
> (b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;
>
> (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a)."

So there is a discretion in the court, subject to whatever conditions the court thinks appropriate, to allow for the use in court of a tape-recorder. As far as we are aware, the defendant has never

made any such application.

18. We have considered the evidence of Mr McGinty from the office of the Attorney General, Mr Simon Ellis (the court manager at the relevant court), Lindsay Gould (the legal advisor at the court), and two police officers who attended the court and investigated these matters, Police Constables McGuigan and Hartley. It is perhaps sufficient to give an indication of the proceedings in February 2012 simply to provide a few extracts from the "You Tube" entry. The introduction begins with "2 February 2012" and reads:

> "Norman Scarth, facing the .... quislings in a kangaroo court."

The footage shows clearly the inside of the court room where the hearing involving the defendant took place. Among other observations, the defendant challenged the jurisdiction of the court as a kangaroo court, referred to it as a "star chamber", told the district judge that he was a "usurper .... not a magistrate, but a crooked lawyer". He challenged the jurisdiction of the court and then repeated that the magistrate was not entitled to continue with the hearing. He was not a magistrate. Indeed, it appeared from the "You Tube" entry itself that the defendant had adjusted the camera because his fingers were visible and the inside of his clothing could be seen. The hearing continued in much the same way. The defendant said that "this is a total farce .... a kangaroo court". When told to calm down, he told the judge to "get stuffed", he would not stand up before a quisling. He ended this part of the hearing with:

> "You're a crook and I hope I live long enough to see you strung up from the lampposts."

He was then heard to say:

> "I can't hear a word you're saying. Why do you mumble? Because you're ashamed of your words, I can understand that."

It is unnecessary to narrate any more. The entire footage lasts for over thirteen minutes. It ends with the removal of the defendant from the court. He directed some insults to the police officers, referring to them as "Gestapo thugs". The footage ends with a blank screen and with the following words:

> "Norman Scarth will be appearing at Manchester Magistrates' Court Thursday 23rd February 2012. All support would be appreciated."

19. We have reflected on the numerous statements that have been received from the defendant. They include the statements dated 3 October 2012, 20 December 2012, 15 January 2013 (with a witness statement), 20 January 2013, and indeed a document which we received this morning.

20. The document dated 3 October 2012 is described as a "declaration and defence". It describes how "the British public are beginning to wake up to a situation in Police State Britain, the Judiciary being the enforcers of the many bad laws brought in by the mass murderers and war criminals of the Blair Regime". He has the "utmost contempt for the Quislings and Shysters" who control the courts and who will be sending him to prison, or to "a Stalinist 'Mental Hospital'". He continues in the same vein. He asserts that the full force of the law was being used maliciously against him and there was no law to protect him, whatever his guilt or innocence "of these ridiculous crimes". He describes a "criminal waste of public money for the Big Guns of the Legal Establishment to pursue the vendetta" against him, "especially in what purports to be a time of financial stringency".

21. We pause to observe that, in a letter dated 3 October 2012, the Treasury Solicitor, acting on behalf of the Attorney General, said:

> ".... should detailed medical evidence be filed which shows proceedings are, or are likely to have a significant impact on your client's health, whether mental or physical; or if your client provided a written undertaking not to repeat his contemptuous behaviour, the Solicitor General would, of course, reconsider the public interest in continuing the proceedings."

That was an entirely reasonable response to a letter from the solicitors then acting for the defendant, inviting the Solicitor General to reconsider whether the proceedings should proceed. There was no filing of any medical evidence. There still is none. There was no undertaking of any kind forthcoming that this contemptuous behaviour would not be repeated. That, in truth, is why the case has gone ahead.

22. By 20 December 2012 the defendant expressed himself satisfied that the Lord Chief Justice had taken "this unusual step", which suggests that the Lord Chief Justice felt that this was an unusual case. Pausing there, although it is not the universal rule that the Lord Chief Justice deals with cases of contempt of court, that has been the trend in the last twelve to eighteen months. The letter continues:

> ".... I take the equally unusual step of writing to you, in the hope that you may put before Lord Judge certain facts WHICH HE WILL NOT OTHERWISE BE ALLOWED TO HEAR."

He says that he will not attend the hearing because he had "fled to Ireland to escape the persecution" which had been increasingly inflicted on him during the last seventeen years. He was "in fear of more than imprisonment" if he dared to set foot in Britain again. He was "in fear of [his] life". He addressed the issue of possible imprisonment:

> "In truth, neither the Attorney-General's team nor Judge Rose's team want me in prison at all, but in a Stalinist 'Mental Hospital', so that my attempts to expose the rotten apples in the Judiciary can be dismissed as the ramblings of a lunatic."

The papers are accompanied with a photograph of one of the dreadful convoys, and the defendant indicates how he had "done [his] bit" in those arctic convoys. We were also supplied with photographs showing bruising and inflammation resulting from "a brutal kicking of an old age pensioner" (the defendant).

23. In a letter dated 15 January 2013 he says that there is "much, MUCH more evidence which could be put forward to challenge [the] malicious application by the Attorney General", but it was "beyond the capability of one solitary man of 87 to do so in the time available".

24. A letter dated 20 January 2013 refers to the "poisonous lies" put in the affidavits advanced on behalf of the Attorney General. They were "completely irrelevant" to the charge against him. There is no need to challenge them. He has more important things to do with his life than "to read that garbage again". He denies some of the assertions about what he had said in the context of the proceedings which culminated in the hearing and decision on 29 May 2012, describing them as "monstrous lies completely irrelevant" to the charge against him, "only introduced to blacken [his] character". He takes issue, as he had before, with the quality of any official recordings made of court proceedings.

25. The court received a document this morning which was said to be urgent. It reads:

> "For all that I have written these last months, the situation can be summed up in 63 words.
>
> 'The Law' in Britain (The police and the Courts), **deliberately** deny me the protection of the law, and **deliberately** block me from seeking a remedy in the courts for crimes and other wrongs committed against me.
>
> That being so, and it **IS** fact, then that same 'Law' **CANNOT** be used to punish me.
>
> Indeed, both Police and Courts have themselves committed serious crimes against me, and do so with impunity."

26. So far as today's hearing is concerned, it is not possible for us to conduct a full investigation into the defendant's belief that the police authorities and the legal system and those involved in it are corrupt and have targeted him in a vindictive way. We cannot consolidate the hearing, as he invites us to in one of the earlier letters, with any appeal he may have against his conviction in May 2012, or indeed his earlier conviction in 2011, where the court has already dealt with the matter. It is clear that the defendant is determined that no order should be made which would introduce any kind of medical disposal addressing possible problems with his mental health, which were identified on his first appearance in the Court of Appeal Criminal Division. Any such treatment would be regarded as "Stalinist", with all the worst implications of the application of that adjective. He invites the court to dismiss the application, without, in fact, any denial that he did make a recording when he appeared in court and that he is responsible for the "You Tube" entry on 17 February.

27. In those circumstances we are faced with a simple question: is it proved that the defendant deliberately contravened section 9(1)(a) and 9(1)(b) of the 1981 Act as alleged? On the evidence we have heard, there is an overwhelming case of which we are satisfied. The findings of contempt must therefore be made.

28. We turn to the issue of penalties. The penalties available to the court following findings of contempt are addressed in section 14 of the 1981 Act. They include the well-known power to commit to prison for a maximum period of two years, to suspend such an order, or to order a fine. The court has the power to make an order under section 35 of the Mental Health Act 1983, to order a remand for a report on the defendant's mental condition where there is reason to suspect that he suffers from a mental disorder within the meaning of the Act, and thereafter to make a hospital order or a guardianship order under section 31, or an interim hospital order under section 38 of the Act.

29. The defendant is brimful of his own ideas. He is utterly convinced that they are right. Nothing will change his views. No court wants to send an 87 year old, somewhat infirm individual to prison unless absolutely compelled to do so as a last resort.

30. On the other hand we must be measured in the way we approach the problem in this case. The defendant has deliberately and consistently and repeatedly continued to commit the same offence, namely contempt in using equipment and acting in a way prohibited by the Act of Parliament. So we must take care not to allow a large measure of sympathy for a deluded old man, who would, we suspect, because of his deluded personality relish what he would regard as a martyr's crown, to be vested with some kind of special immunity, in effect granting him liberty to break the law as and when he chooses to do so without regard to the possible consequences.

31. As we have explained, a medical disposal, which was certainly the one which we would have been most keen to grasp if we could have done, is not available. The defendant is out of the country. He is implacably opposed to any such order. Given his implacable opposition, there is no possibility that he would co-operate, let alone attend for any kind of medical examination. Any attempt to make or to investigate such an order would represent a waste of time.

32. There is no alternative but to face up to his repeated deliberate contempts. We have reached the conclusion that there should be a committal on each of these two counts for 28 days, to run concurrently. But we shall suspend that order so that it will not take immediate effect. It will be suspended for a period of twelve months. That is the order of the court.

33. Before leaving the judgment, however, we should perhaps endeavour to reduce some of the temperature. We remind ourselves, as we remind anyone here in court, and the defendant himself, that he is entitled to apply to the court before any hearing for permission to record the proceedings by way of some mechanical device. We make it clear that if he had attended the hearing today and had made that application (or invited counsel to make the application on his behalf), we should have granted permission. We should have done so because of his age and infirmity, his apparent diminution in hearing and also his burning sense of grievance and his total mistrust of any process by which the court's proceedings are recorded. Given that combination of circumstances we would have been prepared to grant permission. We invite any court which has to deal with him in future as a defendant or a party to litigation, or acting as a McKenzie friend for an individual who is not already legally represented, at least to consider with some sympathy an application, if he chooses to make one, for permission to make a recording.

34. That sympathy, however, does not extend to the misuse of "You Tube" or modern technology for publishing the court process, or part of the court process, any further than that. Our sympathy is designed to enable the defendant to make his own recording of the proceedings -- a recording which he would then feel able to trust in a way that he cannot repose confidence in the court process. That is by way of a footnote. Our decision is the order that we have made.

MR PENNY: My Lord, in the circumstances I have no application.

THE LORD CHIEF JUSTICE: Very well. Thank you, Mr Penny, and thank you, Mr Waldman.
